

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted both remotely and in-person
The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/watch?v=bk0ox--T7cE>

Meeting ID: 822 7489 6113
Richard J. Sullivan Center
15C Springfield Rd
New Lisbon, New Jersey 08064
May 27, 2022 - 9:30 a.m.

Members in Attendance – Alan W. Avery Jr, Edward Lloyd, Mark Lohbauer, Laura E. Matos

Members Absent – Jerome H. Irick

Other Commissioners in Attendance – Theresa Lettman

Commission Staff in Attendance (TDM Room) – John Bunnell, Ernest Deman, April Field, Susan Grogan, Charles Horner, Paul Leakan, Jessica Lynch, Trent Maxwell, Stacey Roth

Commission Staff in Attendance (Zoom) – Gina Berg, Marci Green, Steve Simone

1. Call to Order

Chair Matos called the meeting to order at 9:31 a.m.

2. Adoption of the Minutes from the April 29, 2022, CMP Policy and Implementation Committee Meeting

Chair Matos asked for a motion to adopt the minutes from the April 29, 2022, meeting of the CMP Policy and Implementation Committee. Commissioner Lohbauer made the motion. Commissioner Avery seconded. All voted in favor.

3. Stockton University 2020 Facilities Master Plan

Stacey Roth, Chief of Legal & Legislative Affairs, made a power point presentation on CMP requirements for a State Agency Plan and Stockton University's prior Facilities Master Plans from 1990 and 2010 (attached). Ms. Roth explained that the Commission has reviewed and approved Stockton's prior master plans as State Agency Plans and that it would need to do so again for Stockton's 2020 Facilities Master Plan.

Ms. Roth discussed an issue that arose in approximately 2019 regarding the boundaries of the land area restricted by the 2010 Deed of Conservation Restriction (DCR). This was executed by Stockton as part of the Commission's approval of its 2010 Master Plan. Specifically, the DCR

used a colored map to define the area on Stockton's campus that were subject to conservation restrictions against development.

Unfortunately, boundaries of the deed-restricted lands on this map were not precise. This issue became apparent when Stockton undertook development activities in an area adjacent to the cartway of Vera Farris King Road. This was in an area that Stockton did not believe was subject to restrictions and which the Commission determined was depicted as deed-restricted on the map. The map used to mark the boundaries of the deed-restricted lands in the 2010 DCR did not address existing road shoulders or utility infrastructure on the campus. While the deed restriction did allow the college to perform maintenance within the protected acreage, it did not permit any expansion.

The Commission consulted the New Jersey Department of Environmental Protection (DEP) to determine how best to revise the DCR to ensure continued protection of the deed-restricted lands while also addressing Stockton's needs to expand.

To move forward with revisions to the DCR, staff from the Commission and Stockton spent several years trying to find the base documents from which the map attached to the Deed of Conservation Restriction was created and to ascertain the original site boundaries of the road and other infrastructure as of 2009. This information would constitute the baseline for the 2010 DCR. The goal is to create a GIS-based map of the deed-restricted lands upon which both Stockton and the Commission agree. This GIS map would serve as the basis of an amendment of the 2010 DCR and would also be used going forward to evaluate any development applications submitted by Stockton.

Ms. Roth said that since the project will require the release of lands currently subject to the DCR, it is her expectation that DEP will require the Conservation Restriction and Historic Preservation Act process be conducted. She noted that Stockton remains committed to providing a 1:1 replacement for any lands released from the DCR.

In 2015, the Commission executed a Memorandum of Agreement (MOA) with Stockton solely for an alternate permitting process. Ms. Roth said the Commission is not envisioning a need for a new MOA at this time. The development pockets that were created in the 2010 master plan had conditions concerning the extent of impervious coverage and removal of forest cover. The 2020 Facilities Master Plan retains these development pockets and conditions.

Ms. Roth introduced Charles West, Executive Director of Facilities, Planning, and Infrastructure at Stockton University.

Mr. West shared a slideshow outlining the 2020 Facilities Master Plan, explained its relation to the 2010 Plan, and highlighted certain projects of importance to the University. His presentation can be viewed here:

<https://www.nj.gov/pinelands/home/presentations/Pinelands%20Presentation%20of%20the%202020%20Master%20Plan.pdf>.

Mr. West indicated that the University's main goal in 2020 was to compose a single document that encompasses all of Stockton's properties. Since 2010, the University has grown considerably in both enrollment and facilities. It has added classroom properties in Hammonton, Stafford, and Atlantic City, and added its coastal research facility in Port Republic to the plan. Officials also performed cost analysis and budget estimates to provide forthcoming administrators with a frame of reference for future costs.

Mr. West said many private landowners in Galloway Township reach out to the University with offers to donate their land. He said sometimes the University accepts these offers and other times it declines. He continued that the University has grown to such a point that the 2010 plan was no longer reflective of what Stockton is today. After this update, there is now a single document with a comprehensive list of every facility that Stockton owns.

Commissioner Lloyd asked how the University is accommodating environmental protections in its 2020 plan and what mitigative actions it is taking to reach those goals.

Ms. Roth said the 2020 Master Plan will not result in a significant environmental impact. The University is remaining within its existing development pockets and the amount of impervious coverage has not increased since the last plan adoption. The 2020 Master Plan proposes new types of development within these existing pockets. She said the only outstanding issue to address is accommodating the existing roads and infrastructure in the 32.4-acre deed-restricted area.

Commissioner Lloyd said he is interested in quantifying the changes between 2010 and 2020 and calculating the delta change on preserved land.

Stockton representative Rick Riccardi cited the sewage pump station application to the Commission as an example of why the DCR needs to be amended. It was a pump station that received the University's sewage and was diverted to a main on Jimmie Leeds Road. The University applied to the Commission to update the station, but the construction project necessitated an update to the conservation easement to operate in the area. He said much of Stockton's work is simply retrofitting existing infrastructure, and not pushing new development into the deed-restricted area.

Ms. Roth said Commission staff noticed that wetlands buffers and deed-restricted areas extended right up to the roadway on Vera Farris King Dr. She noted the boundaries are difficult to ground truth and that there was no language in the DCR to account for this kind of construction. The 2010 DCR did not provide any exception or exemption for the University to update the infrastructure in the protected area that predates the filing of the DCR.

Mr. Riccardi noted that the roadways serving Stockton were only meant to serve the University and are not owned by the municipality. The wetlands buffers approach the roadway and preclude Stockton from performing any maintenance on the shoulder. There is no assigned right-of-way to any of the roadways.

Ms. Roth said this reality became apparent when the University attempted roadway maintenance and realized the areas around the roads are restricted. This has created an application backlog for development on the campus; the University cannot proceed with other projects until the issue involving the DCR triggered by the Vera Ferris King Drive project is resolved. The University's goal is to resolve the outstanding violation, which means amending the existing deed of conservation restriction. Commission staff is working to create an improved map of the restricted areas.

Ms. Grogan said the amended deed restriction will not only better define the deed-restricted area but also include the new offset lands.

Commissioner Lohbauer thanked the Stockton officials for attending the meeting and demonstrating their cooperation with the Commission. He asked if parking expansions at Stockton were simply due to the increased student body and if the University had considered public transit connections.

Mr. West said the University is removing parking lots in its new plan and the parking garage is intended to compensate for those losses. The University also operates a routine shuttle between Galloway and Atlantic City. He said Stockton hopes to purchase electric vehicles for staff and is cognizant of carbon emissions. He added the parking garage will not likely be constructed in the next five years.

Commissioner Lettman asked Ms. Roth if Stockton had started the diversion process. Ms. Roth said discussions are ongoing with DEP, and that the project is a release, not a diversion. The Commissioner asked if Stockton would go through the process via Green Acres. Ms. Roth confirmed that they would, but that the land was preserved by DEP on behalf of the Commission. The DEP Commissioner would have to approve releasing those lands after a public hearing in accordance with the NJ Conservation Restrictions and Historic Preservation Restrictions Act process.

Ms. Grogan said development in the deed-restricted area cannot move forward until the DEP release process is finished. She said if the Commission agrees with Stockton on the final map and offset requirements, the release process can get underway and applications outside the deed-restricted area can resume.

Commissioner Lettman said the map of proposed exemptions depicts infrastructure in the deed-restricted area. Ms. Grogan replied that the map included in the packet was the one that needs to be finalized so that all infrastructure is properly identified.

Ms. Roth added that the DEP should be open to this process, as the Commission is a third-party beneficiary in this instance.

Commissioner Avery asked if amending the deed restriction includes State House Commission review. Ms. Roth said that it does not.

Commissioner Avery asked if the existing sewer system on Pomona Road ends on the east side of the Garden State Parkway. Mr. West said water service would extend down Pomona Road from the intersection with Duerer Street. The nearest sewer connection is situated on the White Horse Pike. The new interconnections would be heading towards the Parkway rather than extending from it.

Commissioner Avery asked if the University officials would be interested in preserving the land donations they receive from private landowners. Mr. West said they would absolutely be interested in that possibility.

Commissioner Lohbauer asked if any action was necessary on the adoption of the Master Plan. Ms. Grogan said no, and that this presentation was merely an opportunity for Commissioners to ask questions and express concerns.

4. Kirkwood-Cohansey Water Management Amendments

Ms. Grogan discussed the Kirkwood-Cohansey Aquifer management amendments to the Comprehensive Management Plan (CMP) that were presented at the March committee meeting. The draft provided in the May P&I packet is the final draft rule proposal that staff has submitted to the Governor's office for approval. Upon receipt of that approval, the Commission can formally authorize the proposal.

Ms. Grogan said there was no need for the Committee to take any formal action on rule proposal today. She mentioned a call scheduled with the Governor's office during the first week of June to address any questions that they may have on the rule proposal. Ms. Grogan said she hoped the Commission would be able to act in July.

Chair Matos thanked Ms. Grogan, Marci Green, and Gina Berg for the time and effort put into the K-C rules. She said she read through the document and had no questions.

Commissioner Avery congratulated the staff on completing the rule language, and said he is very familiar with the level of complexity tied to references, ordinance writing, and numerical figures.

Commissioner Lohbauer said he echoed the sentiment, calling it a 20-year labor of science and love. There have been many studies conducted by Commission staff to create this very complex set of recommendations for changes to the CMP. He said he has read through the draft rule and thinks it is a marvelous piece of work. The Commissioner continued that he is grateful to see the amendments finalized in print after several years of discussion and expectations. He highlighted the importance of protecting wildlife from the consequences of over-pumping the aquifer. He also agreed with Commissioner Avery in complimenting the staff.

5. Overview and Update on CMP Amendment Petition Submitted by Bill Wolfe

Ms. Grogan provided an overview on a CMP amendment petition that Bill Wolfe submitted to the Commission in March. She noted that the Committee once again did not have to take any formal action on the matter. Ms. Grogan said that amendment petitions are rarely received by the Commission in the modern era; Commissioner Avery is the only Commissioner that was present for the previous submissions.

When the Commission was first established in the 1980s, there were multiple amendment petitions to change management areas to accommodate certain areas or properties. Later, the Commission received an amendment petition to change the limitations on septic pilot systems in individual developments that was submitted by the New Jersey Builders Association.

Ms. Grogan shared a slide that listed content required for rule petitioning in the CMP. The petitioner must express their proposal with precise wording and describe in detail what kind of changes they want to see (map change on land capability map, new standards, wording). They must provide analysis that justifies the amendment and explain why current standards in the CMP are insufficient. The petitioner must also demonstrate how the new amendment would conform to the CMP, the Pinelands Protection Act, and the federal act.

The CMP lays out a specific process for amendment petitions. Commission staff must determine within 30 days of receiving a petition whether it is complete. If the petition is deemed incomplete, the Executive Director (ED) shall mail a written statement to the petitioner specifying the information needed to complete the submission. No further action can be taken by the Commission until the missing pieces are provided.

Once the process is completed, the Commission notifies the petitioner and prepares a formal notice of petition for rulemaking. The Commission will also file a notice of petition for rulemaking with the Office of Administrative Law that is published in the New Jersey Register. After that, the Commission staff rules on the substance of the petition and decides if it raises a legitimate issue that the staff should consider. If that is the case, the ED files a notice of determination, and the petition is referred to the full Commission for denial, approval, or additional review. When the petition is complete, the Commission must decide within 90 days and additional notices are filed in the New Jersey Register.

The Commission staff, along with the Highlands Council and the DEP, received this specific petition via email on March 9, 2022. The petitioner requested a ban on new development in mapped “extreme” wildfire hazard areas, restriction of new development in mapped “very high” and “high” wildfire hazard areas, and a mandated retrofit of state-of-the-art fire prevention practices on existing development in areas mapped “extreme”, “very high”, and “high” wildfire hazard areas.

Mr. Wolfe also asked for a prohibition on reconstruction of fire-damaged properties in mapped “extreme”, “very high”, and “high” wildfire hazard areas. His final request was to monitor, quantify, and publicly report in NJ’s Clean Air Act State Implementation Plan all air pollution emissions and impacts of wildfires and prescribed burns. This would include greenhouse gas emissions and fine particulate matter (including very fine particulates less than PM10).

Ms. Grogan shared the Plate 11 wildfire hazard map from the original CMP in 1981. She mentioned that CMP standards rely on wildfire hazard boundaries outlined in the map. Under current CMP guidelines, no application for development can be approved in moderate, high, or extreme hazard areas unless the applicant can meet certain criteria. She further explained the stipulations placed on new developments (25 dwelling units or greater) in higher wildfire hazard areas, including multiple accessways, egress and ingress, and rights-of-way on Pinelands roads.

The CMP also sets standards for fire hazard fuel breaks, which allow for the selective removal or thinning of trees, brushes, shrubs, and ground cover. The fuel break increases incrementally for every risk area. Ms. Grogan noted that the standards have been used by the Commission since its inception and that Commission staff ensures the wildfire rules are met by all affected development applications.

Ms. Grogan shared another requirement on even larger developments with 100 dwelling units or greater. These necessitate an even wider 200-foot perimeter fuel break between all structures and the forest.

Ms. Grogan described the petition's status in the administrative process. The first incomplete letter was sent to Mr. Wolfe on March 24, stating the petition did not include all the criteria mandated by the CMP. Mr. Wolfe provided a response that day with additional information. The Commission received another email illustrating conformance with the CMP on April 12. Mr. Wolfe received another incomplete letter on May 12, specifically outlining what is missing from the petition. The Commission has not heard from Mr. Wolfe since sending the incomplete letter in May. The DEP and Highlands Council have both denied the petition.

Commissioner Lloyd asked if the letters between Mr. Wolfe and the Commission were included in the packet for the meeting. Ms. Grogan replied no, and that only the petition itself was included in the packet. She added that she would be happy to send the letters to the Commissioners. Commissioners Lloyd and Lettman both said they would like to see them.

Commissioner Lohbauer said he agreed that he did not have enough information to comment on the substance of the petition but did want to address the petitioning process. He thanked Ms. Grogan for putting time and effort in showing the Commissioners that Commission staff is compliant with the CMP. He said he would like to speak to the Committee and staff about compliance with the spirit of the law.

He said he thinks the petitioning process described in the CMP exists so that members of the public can offer amendments to the plan where they see weaknesses and inconsistencies. He reiterated the key points of the process and lauded the ability of the CMP to acknowledge and implement public input. He did not feel it would be reasonable to give the staff or the Commissioners the sole capacity to recognize a need for changes to the CMP. He finished by questioning if the Commission is doing everything it can to facilitate similar petitions.

Ms. Grogan said she agreed with much of what Commissioner Lohbauer said. She added that the Commission generally sees few formal amendment petitions because staff knows in advance of issues that exist and actively reaches out to organizations considering submitting a petition. The

Commission can make changes to the CMP without launching the lengthy formal petitioning process.

She said she thinks the Commission has a great track record of achieving changes to the CMP without the need for a formal petition. She continued that while petitions are completely viable, there are simpler ways to successfully effect change in the CMP.

Commissioner Lloyd said nearly every federal and state environmental law in the U.S. mandates a petitioning process for rulemaking. He added that agencies are not generally receptive to petitioning as it dictates what staff must do with their time. It can be very effective but can take a long period of time.

Commissioner Lloyd cited an example of a petition to the EPA asking the organization regulate carbon dioxide as an air pollutant. This petition led to a Supreme Court decision that allowed it. He mentioned another petition on banning use of an unnamed pesticide that has been in court for 14 years. He agreed with Ms. Grogan's assessment that the informal channel is preferable for rulemaking.

Commissioner Avery said the Commission is the only entity he knows of that actively thought about wildfire hazards in its plan development and recommendations for land use. He said he did not mind having a discussion to assess whether the DEP map submitted by the petitioner concurs with the map that the Commission uses.

6. Public Comment

Rhyan Grech of the Pinelands Preservation Alliance (PPA) asked a question about the Stockton presentation. She asked if the infrastructure projects that do not encroach on the deed-restricted areas will move forward through the expedited application process under the MOA or the normal process.

Ms. Grogan confirmed that it would be the normal process, and that the MOA is in a state of suspension currently. Ms. Grech asked if the MOA would resume effect once the deed restriction situation is remedied. Ms. Grogan replied that it remains to be seen, and it may not be that simple because Stockton is adopting a new master plan and the Commission may need to update the MOA before it would be applicable.

Ms. Grech mentioned the draft amendment for the Kirkwood-Cohansey rules. She said PPA sent a letter to the Commission supporting the amendments, saying it was a long time coming. She offered some criticisms and recommendations on behalf of the PPA. Ms. Grech disagreed with the exception on diversions for agricultural purposes, saying it was overly broad. Modern horticulture is especially heavy on water usage; this also pertains to cannabis facilities in the Pinelands.

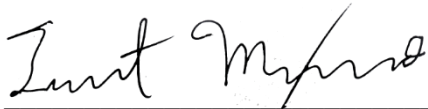
Ms. Grech also expressed concern on viable alternative water supply sources. The draft rules allow prohibitive cost as an acceptable reason for applicants to continue using the resources of

the K-C aquifer. She said this provision is too elastic and allows applicants to argue that a viable alternative source of water is simply too expensive. Developers and applicants will seek the most expedient and cost-effective route.

Lastly, she addressed wells that are not subject to new standards. In particular, she mentioned replacement wells. She recommended adding language that the new well must be within the same watershed as the existing well.

Chair Matos asked for a motion to adjourn the meeting at 11:23 a.m. Commissioner Avery made the motion and Commissioner Lohbauer seconded. All voted in favor.

Certified as true and correct:

A handwritten signature in black ink, appearing to read "Trent Maxwell", written over a horizontal line.

Trent Maxwell, Assistant Technical Planner

Date: June 8, 2022